IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 3743 of 2007()

LP.31/2005 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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PETITIONER: 2ND ACCUSED

VINCENT ANTONY, S/O.ANTONY,
AGED 47 YEARS, RESIDING AT NEDUNKALLEL HOUSE,
KOOVALLOOR, VAKKATHIPPARA, POTHANICAUD VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.JOICE GEORGE

RESPONDENTS: STATE AND 1ST ACCUSED

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1. STATE OF KERALA, (SUB INSPECTOR OF POLICE,
THODUPUZHA POLICE STATION CRIME NO.486/02) REP. BY
THE PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA, ERNAKULAM.

2. BIJU JOHN, S/O.JOHN, AGED 33 YEARS, RESIDING
AT KADAMKULAM HOUSE, AYAMANA, SNDP JUNCTION,
ENANALLOOR VILLAGE, ERNAKULAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3743 of 2007

Dated this the 14th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 420 and 406 I.P.C. The petitioner was arrayed as the second accused. Cognizance was taken, but as the petitioner was not available for trial, trial against the co-accused continued. The co-accused was tried found not guilty and acquitted. It is submitted that all the material witnesses had turned hostile to the prosecution they having compounded the offence against the accused. The case against the petitioner has been split up. The petitioner has not entered appearance so far. Warrant of arrest issued by the learned Magistrate is chasing the petitioner.

2. According to the petitioner, the prosecution against him is liable to be dropped. The victims/complainant have settled the disputes with him, they having compounded the offence alleged. The offences alleged under Sections 420 and 406 I.P.C are compoundable. In these circumstances it is prayed

that the petitioner may be permitted to appear through counsel and the complainant may be permitted to report composition. The petitioner is employed outside Kerala and it is not possible for him to immediately come to the court and that is why such a request is being made, submits the learned counsel for the petitioner.

3. The learned counsel for the petitioner submits that if the petitioner is permitted to appear through pleader and raise his contentions, the court can be persuaded to come to a conclusion that the charges are liable to be framed only for compoundable offences. It can then be shown that the victims have compounded the offences against the petitioner. It is for the petitioner to make an application before the learned Magistrate seeking exemption from appearance. He must also report to the learned Magistrate that the offences have been compounded by the complainant. He can also attempt to satisfy the learned Magistrate that charges are not liable to be framed for any non compoundable offences. The learned Magistrate must consider such request and pass appropriate orders.

4. At any rate, I do not find any circumstances which can justify the quashing of the proceedings initiated against the petitioner invoking the powers under Section 482 Cr.P.C. In the light of the decision in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552 (F.B)], the acquittal of the co-accused cannot be reckoned as a sufficient circumstance to justify the quashing of the proceedings against the petitioner.

5. This Crl.M.C is dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-